IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 905 OF 2005
IN
SUIT NO. 817 OF 1983

R.L. Ramchandani.] .. Appellant (Ori.Defdt.No.1)

Versus

Rewa Chambers Premises Cooperative Society Ltd. & ors.]] .. Respondents (Ori.Pltffs.-Defdt.Nos.2 & 3)

Mr. Karl Shroff i/b M/s. Dhru & Co. for appellant.

Ms. Talon Hauda for respondent No.1.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 20TH JANUARY, 2006

P.C. :

. Heard Mr. Karl Shroff, the learned counsel for the appellant. We perused the impugned order.

2. The learned counsel for the appellant submits that due to shifting the office of the Advocate for the appellant in the year 1989, the Written Statement could not be filed. He also submitted that even if no Written Statement was filed, the learned Trial Judge was not justified in passing the decree mechanically. He relied

upon the judgment of the Supreme Court in the case of **Balraj Taneja Vs. Sunil Madan AIR 1999, S.C., 3381**.

3. The contentions of the learned counsel for the appellant do not appeal us. It is not in dispute that on 23rd August, 1983, the defendants were granted 12 weeks' time to file their Written Statement. For 21 years and 10 months, no Written Statement was filed and the matter was posted before the Court on 23rd June, 2005 under the Caption "For want of Written Statement". On that day, an Affidavit was filed by the Advocate for the defendant No.1 that due to shifting of the appellant's Advocate's office in the month of May 1989, the papers of the brief got misplaced. On 22nd June, 2005 it came to the notice of the Advocate for the defendant No.1 that the matter has been shown on Board for want of Written Statement. The appellant's Advocate immediately tried to locate the papers, but could not trace the same. We are afraid if the defendant No.1 (appellant herein) could not file the Written Statement for more than 21 years, he is not entitled to any further indulgence. As a matter of fact, there is no explanation whatsoever for not filing the Written Statement for the period from 1983 until 1988. Even when the matter was shown on Board for want of Written Statement, on that day also, the defendant No.1 did not

file any Written Statement nor the Advocate for the defendant No.1 was ready with the Written Statement. We find that the defendant No.1 was grossly negligent in filing the Written Statement and the learned Trial Judge cannot be said to have committed any error in rejecting the prayer for adjournment for filing the Written Statement.

4. Insofar as the judgment of the Supreme Court in the case of Balraj Taneja is concerned, we find that the said case has no application. That was a case where in a suit for specific performance of the contract, the defendant did not file Written Statement. The trial Court decreed the suit on the ground of failure of the defendant in filing the Written Statement. The Supreme Court observed that the trial Court ought to have seen the facts set out in the Plaint and consider if those facts were treated to have been admitted whether the judgment could be passed in favour of the plaintiff. It was observed by the Supreme Court that in a suit for specific performance of the contract the plaintiff has to prove that he was ready and willing to perform his part of the contract and that being a mandatory requirement, the trial Court ought to have scrutinized the facts set out in the plaint to find out whether the said requirement of Section 16 of the Specific Reliefs

Act is complied with or not. Insofar as the present case is concerned, the plaintiff has sought for decree against defendant No.1 for recovery of taxes amounting to Rs.1,78,642/- being the amount entrusted by the members of the plaintiff-Society prior to formation of the said Society. For want of Written Statement, the facts stated in the plaint remained uncontroverted and untraversed. In our view, there was no impediment for the trial Judge in passing the decree by directing the first defendant to settle accounts in respect of the amounts collected by him from the members of the plaintiff-Society prior to its formation.

5. Appeal does not deserve to be admitted.

6. Dismissed in limine.

[R.M. LODHA, J.]

[ANOOP V. MOHTA, J.]

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